

**Lease Comments – Docket No. 07-42**  
**Shay George on behalf of Pope Broadcasting Company**

**Overview:**

In our several years being involved in local programming, we have experienced many unethical, illegal and discriminatory practices by a number of cable providers. The current requirements governing local programming give tremendous advantage and power to the cable providers. Now that companies such as, Comcast, have bought out so many of the smaller carriers, it has become increasingly more difficult and costly for local programmers to secure channels. In general, cable operators use many tactics to discourage local programmers from pursuing channels, such as:

- Saying they do not lease whole channels
- Saying they do not have a channel available at the time and will let you know if one opens up
- Offering astronomical rates not affordable to local programmers
- Delays in responding to requests and giving local programmers the “run-a-round”
- Requiring Errors and Omissions Insurance in extremely large dollar amounts not easily affordable or assessable to local programmers
- Demonstrating preferential treatment toward some programmers in pricing, channel assignment, and more favorable contract terms
- Providing some programmers with long term contract periods while others are required to renew yearly subject to increases in rates each time

**Channel Availability and Assignment:**

Many of the local programmers currently using channels are those who have worked for or whose family or friends have worked for the cable provider at some point giving them an inside track to the local programming process. Many are associated personally, professionally and/or socially with those responsible for making decisions in this area. These management-level employees often direct other programmers interested in acquiring time on their system to do business with the favored programmer. Cable operators often demonstrate preferential treatment to some programmers by giving substantial discounted rates and less stringent terms to some and not others. Also, they require large dollar amounts in insurance to discourage some programmers while not requiring the same for favored programmers.

Out of the three cable providers in our area, all three initially told us they did not have any full time channels available and that they would let us know when “something” opened up. However, we noticed that some programmers were acquiring channels without delay. The cable operator did not divulge that they were required to provide a certain percentage of channels. Thus, only one or two select programmers are able to benefit from the so called “set-aside” channels. Outside of this small circle, most people are not even aware there are FCC guidelines

governing local programming. Cable operators use this lack of knowledge to prevent others from seeking programming opportunities. When challenged, they will often concede by offering a less desirable channel on digital cable or less popular tiers while still keeping the rates high. In addition, large conglomerates will often have a tremendous disparity between their full capacity set-aside channel/s and their other set-aside channel/s. For instance, one carrier presented a rate of over \$300,000/monthly for their full capacity channel, but said they could not make available any of their other more affordable channels because they did not meet the 50% subscriber

penetration rule required by the Commission. By doing this, they created an “all or nothing” situation, fully realizing that no local programmer could afford such rates, but at the same time, alleviating them of their obligation to local programmers in this area.

### **Lack of Diversity:**

There is a tremendous disproportion in ethnic minority participation in local programming due to a number of reasons: discrimination, lack of opportunities, lack of information, financial requirements, etc. According to many studies, less than 7% of minorities are involved in the creative and/or production aspects of television programming throughout America. A lack of representation of and perspective from these groups on television is directly correlated to unreasonable bias and negative perceptions held by many viewers of all races. Local programming would be the most viable option for leveling the playing field. However, cable operators systematically make it especially difficult for minorities to secure channels. An evaluation of the percentages of minorities currently in local programming on any of the cable systems across the country would prove this point to be true. Specific conditions and allowances should be provided to help rectify this inequality.

### **Complaint Process:**

The current complaint process is inequitable and burdensome for local programmers. The lengthy and costly procedure of securing up to three accountants to evaluate and determine the accuracy of the cable provider's rates is not financially feasible for most programmers to pursue while comparatively cable providers have unlimited resources and staffing to handle their interests in such matters. In addition, although the Commission imposed a condition (FCC 06-105) to permit the use of commercial arbitration to resolve disputes with Comcast and Time Warner about commercial lease access, we were unsuccessful in getting the FCC to enforce this condition as the Commission had not named a specific process of arbitration, thus rendering this condition moot. Many programmers have not used these provisions to challenge rates because of similar situations.

### **Summary:**

Local programmers play a vital role in providing programming that is more inclusive and reflective of our local communities' interests and values. The objective of most local programmers is to offer family, community and faith-based programming which provide alternatives to the excessive sex, violence and profane language available on both network and cable television channels. While large television companies and cable providers are driven by advertising dollars, the local programmer is often driven by a love for and commitment to the betterment of his

or her community. However, by acquiring most of the smaller carriers across the country, a few of these huge conglomerates are systematically shutting out opportunities for local programmers to broadcast on their systems and using the current FCC guidelines to do it.

Many of the set-aside channels are used more for infomercials rather than local programming. The FCC guidelines need to be revised to reestablish a balance in this area and provide for more stringent penalties to help assure cable providers' adherence.